

Remarks

Claims 21 – 51 remain in the application. In response to the Examiner's identifying a petition and surcharge requirement in association with the re-claiming of priority, and in response to the Examiner's providing the Applicant an opportunity to supply the omitted petition and fee or to otherwise correct Applicant's application, Applicant hereby again eliminates Applicant's previous claim to priority of earlier filed patent applications. Applicant further readdresses herein those items from the Examiner's fourth office action which require treatment. This transmittal is presented in response to the fifth office action and is believed to completely resolve each issue as raised by the Examiner. Applicant believes the claims as amended to be non-obvious and patentably distinct from all prior art.

OA(5) Item #1: Requirement of Petition under 37 USC § 1.78(a)(3) or (a)(6) and surcharge or Correction:

The Examiner has pointed out that Applicant has omitted a petition under 37 USC § 1.78(a)(3) or (a)(6) along with the required surcharge in association with Applicant's re-claiming priority to earlier filed applications. The Examiner further required Applicant to supply the omitted items or correct the application. In response to the Examiner's requirement, Applicant hereby again eliminates Applicant's previous claim to priority of earlier filed patent applications. Thus Applicant now only claims priority to the April 7, 1999 filing date of previously copending 09/287,798 application which has since issued as US patent 6,386,138. Applicant points out that Applicant has maintained a claim to the benefit of the April 7, 1999 filing date since Applicant originally filed the current application. Inasmuch as Applicant has requested an amendment to the specification to eliminate a claim of priority to applications filed earlier than April 7, 1999, Applicant respectfully suggests that Applicant's application is now in condition for examination and allowance.

OA(4) Item #4: Rejection of claims 50-51 under 35 USC § 103(a) – Obviousness:

The Examiner has rejected claims 50-51 under 35 USC § 103(a) as being unpatentable over Schramm '046 in view of Broshi et al '172. In response to the Examiner's rejection, Applicant has

added additional limitation to claim 50. Applicant believes claim 50 as amended to be non-obvious over Schramm '046 and Broshi et al '172. Inasmuch as claim 50 has been amended to be non-obvious over Schramm '046 and Broshi et al '172 and inasmuch as claim 51 depends from claim 50 and inherently includes all the limitations of claim 50, Applicant respectfully requests that the rejection be withdrawn.

OA(4) Item #5: Rejection of claims 40, 43, and 45 under 35 USC § 102(e) – Anticipation:

The Examiner has rejected claims 40, 43, and 45 under 35 USC § 102(e) as being anticipated by Martindale '797. In response to the Examiner's rejection, Applicant has added additional limitations to claim 40. Applicant believes claim 40 as amended defines over Martindale '797. Inasmuch as claim 40 has been amended to define over Martindale '797 and inasmuch as claim 43 and claim 45 depend from claim 40 and inherently include all the limitations of claim 40, Applicant respectfully requests that the rejection be withdrawn.

OA(4) Item #6: Rejection of claim 42 under 35 USC § 103(a) – Obviousness:

The Examiner has rejected claim 42 under 35 USC § 103(a) as being unpatentable over Martindale '797. Applicant has added additional limitations to claim 40. Applicant believes claim 40 as amended defines over Martindale '797. Inasmuch as claim 40 has been amended to define over Martindale '797 and inasmuch as claim 42 depends from claim 40 and inherently include all the limitations of claim 40, Applicant respectfully requests that the rejection be withdrawn.

OA(4) Item #7: Rejection of claim 41 under 35 USC § 103(a) – Obviousness:

The Examiner has rejected claim 41 under 35 USC § 103(a) as being unpatentable over Martindale '797 in view of Lintvedt '294. Applicant has added additional limitations to claim 40 and has revised claim 41. Applicant believes claims 40 and 41 as amended define over Martindale '797 and Lintvedt '294. Inasmuch as claim 40 has been amended to define over Martindale '797 and Lintvedt '294 and inasmuch as claim 41 depends from claim 40 and inherently include all the limitations of claim 40, Applicant respectfully requests that the rejection be withdrawn.

OA(4) Item #8: Rejection of claims 21-22, 24-28, 30-34, 36-40, 42-45, and 47-51 under 35 USC § 103(a) – Obviousness:

The Examiner has rejected claims 21-22, 24-28, 30-34, 36-40, 42-45, and 47-51 under 35 USC § 103(a) as being unpatentable over the combination of Law '239 in view Schramm '046, Hunter (GB) 1,428,356, Martindale '797, and Japan 11-227388. Applicant respectfully traverses the Examiner's rejection on the basis that Applicants' invention in the appended modified claims is substantially different than the cited prior art patents and thus nonobvious. Applicant notes that while Schramm '046, Hunter (GB) 1,428,356, Martindale '797, and Japan 11-227388 are directed toward spill resistant containers, Law '239 is directed towards a conventional egg crate type egg coloring container. While Law '239 does recognize spilling as a problem, Law '239 attempts to solve the spilling problem by providing an egg crate structure having multiple egg containing compartments that eliminate the need to move separate bowls to "create work room". Such solution is of course inadequate as it only minimally reduces spills and leaves the egg crate type container extremely susceptible to spilling when tipped. Law '239 does not provide for an egg container that prevents spillage regardless of the orientation of the container. However, Law '239 supposedly solving the spilling problem in an egg container, Applicant respectfully suggests that there is no obvious motivation to combine the cited references. On the contrary, Applicant's current invention and the cited prior art are far removed. The invention of a container that provides ready access to a removable egg and yet provides for the resistance to spillage of liquid contents of the container when the container is oriented in any position, is distinctly nonobvious. Applicant respectfully suggests that having a funnel member of a size and shape that will allow for the passage of an egg is counterintuitive. And yet it is the combination of Applicant's funnel, container geometry and contents that combine to provide the claimed function and thus contribute to patentability of Applicant's invention. Based on the novel and nonobvious nature of Applicant's invention, Applicant respectfully requests that the rejection be withdrawn.

OA(4) Item #9: Rejection of claims 23, 29, 35, and 41 under 35 USC § 103(a) – Obviousness:

The Examiner has rejected claims 23, 29, 35, and 41 under 35 USC § 103(a) as being unpatentable over the combination of Law '239 in view Schramm '046, Hunter (GB) 1,428,356, Martindale '797, and Japan 11-227388 in further view of Lintvedt '294. Applicant respectfully traverses the Examiner's rejection on the basis that Applicants' invention in the appended modified claims is substantially different than the cited prior art patents. Applicant notes that while Schramm '046, Hunter (GB) 1,428,356, Martindale '797, and Japan 11-227388 are directed toward spill resistant containers, Law '239 is directed towards a conventional egg crate type egg coloring container and Lintvedt is directed towards a "clear container". Applicant respectfully points out that Applicant does not rely merely on a clear or transparent container for patentability in any of Applicant's independent claims. While Law '239 does recognize spilling as a problem, Law '239 attempts to solve the spilling problem by providing an egg crate structure having multiple egg containing compartments that eliminate the need to move separate bowls to "create work room". Such solution is of course inadequate as it only minimally reduces spills and leaves the egg crate type container extremely susceptible to spilling when tipped. Law '239 does not provide for an egg container that prevents spillage regardless of the orientation of the container. However, Law '239 supposedly solving the spilling problem in an egg container, Applicant respectfully suggests that there is no obvious motivation to combine the cited references. On the contrary, Applicant's current invention and the cited prior art are far removed. The invention of a container that provides ready access to a removable egg and yet provides for the resistance to spillage of liquid contents of the container when the container is oriented in any position, is distinctly nonobvious. Applicant respectfully suggests that having a funnel member of a size and shape that will allow for the passage of an egg is counterintuitive. And yet it is the combination of Applicant's funnel, container geometry and contents that combine to provide the claimed function and thus contribute to patentability of Applicant's invention. Based on the novel and nonobvious nature of Applicant's invention, Applicant respectfully requests that the rejection be withdrawn.

Conclusion:

Applicant notes that any amendments made by this paper which are not specifically discussed herein are made solely for the purpose of more clearly and particularly pointing out and claiming Applicant's invention.

Applicant specifically reserves the right to prosecute claims of broader and differing scope than those presented herein in a continuation application.

Applicant submits that the amendments and the arguments presented herein have placed the claims in condition for allowance. Action in accordance therewith is earnestly solicited.

If the Examiner has any questions or comments which may be resolved over the telephone, she is requested to call Michael R. Schramm at 801-625-9268 or at 801-710-7793.

DATE: January 4, 2006

Respectfully submitted,



Michael R. Schramm